IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 31606 of 2007(K)

PETITIONER:

RADHAMMA, AGED 65 YEARS,
S/O.SMT.BHAGEERATHI AMMA, RESIDING AT
PANGODE KIZHAKKEKKARA PUTHEN VEEDU,
KUNNAPPUZHA, THIRUMALA, ARAMADA P.O.
THIRUVANANTHAPURAM.

BY ADV. SRI.T.RAJASEKHARAN NAIR

RESPONDENTS:
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1. THE ASSISTANT COMMISSIONER OF POLICE,
CANTONMENT, THIRUVANANTHAPURAM.

2. THE SUB INSPECTOR OF POLICE,
POOJAPURA POLICE STATION,
THIRUVANANTHAPURAM.

3. SREEDEVI, THERIVILA PUTHEN VEEDU,
KUNNAPPUZHA, ARAMADA P.O., THIRUVANANTHAPURAM.

4. ANILKUMAR, THERIVILA PUTHEN VEEDU,
KUNNAPPUZHA, ARAMADA P.O.,
THIRUVANANTHAPURAM.

5. SASIDHARAN NAIR, THERIVILA PUTHEN VEEDU
KUNNAPPUZHA, ARAMADA P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.G.S.REGHUNATH
GOVT. PLEADER SRI.P.A.SALIM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC NO.31606/2007)

PETITIONER'S EXTS.

EXT.P1 - THE TRUE PHOTO COPY OF THE SALE DEED DATED 12.10.04.

EXT.P2 - THE TRUE PHOTO COPY OF THE TAX RECEIPT DATED 20.4.07.

EXT.P3 - THE TRUE PHOTO COPY OF THE ORDER OF INJUNCTION PASSED BY THE PRINCIPAL MUNSIFF'S COURT, THIRUVANANTHAPURAM IN O.S.NO.1285/2007 DATED 2.8.2007.

EXT.P4 - THE TRUE PHOTO COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE 1ST AND 2ND RESPONDENTS REQUESTING TO GIVE ADEQUATE PROTECTION TO THE LIFE AND PROPERTY OF THE PETITIONER DATED 12.10.07.

EXT.P5 - THE TRUE PHOTO COPY OF THE PATTA ISSUED TO THE PETITIONER FOR THE SAID 3 CENTS OF LAND BY THE SPECIAL TAHSILDAR, SREE PANDARAVAKA LANDS NO.III, TRIVANDRUM.

EXT.P6 - THE TRUE PHOTO COPY OF THE COMMISSION REPORT FILED BY THE ADVOCATE COMMISSIONER.

RESPONDENTS' EXTS.

EXT.R3(a) – TRUE COPY OF THE PARTITION DEED DATED 1.1.1968.

EXT.R3(b) – TRUE COPY OF THE SALE DEED NO.2865 OF 1989.

EXT.R3(c) – TRUE COPY OF THE SETTLEMENT DEED NO.1030 OF 1990.

EXT.R3(d) – TRUE COPY OF THE SALE DEED DATED 9.3.1998\

EXT.R3(e) – TRUE COPY OF THE SALE DEED DATED 15.1.2001.

EXT.R3(f) – TRUE COPY OF THE OBJECTION TO THE INJUNCTION FILED BY THE RESPONDENT IN O.S.NO.1285/2007.

/TRUE COPY/

K.BALAKRISHNAN NAIR &

K.P.BALACHANDRAN, JJ.

W.P.(C) NO. 31606 OF 2007-K

Dated 4th December, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner claims possession and enjoyment over 3 cents of land in Sy.No.1243 of Thirumala Village, Thiruvananthapuram Taluk. There is a hut in the said plot of land. When she tried to re-thatch the same, the respondents 3 to 5, who have no manner of right over the said property, caused obstruction. Therefore, the petitioner filed O.S.No.1285/2007 before the Munsiff's Court, Thiruvananthapuram and obtained Ext.P3 injunction order against respondents 3 to 5 herein, who are the defendants in that suit. The relevant portion of the said injunction order reads as follows:

> "You, the above said cr-petitioners/defendants are hereby restrained by an ad interim injunction restraining the defendants and their agents and henchmen from trespassing into any portion of the plaint A schedule property and from interfering with the peaceful possession and enjoyment of the plaint A schedule property by the plaintiff in any manner until further orders."

Even thereafter, the party respondents are causing obstruction to the re-

thatching of the roof of the hut. So, seeking protection for the same, she has filed Ext.P4 representation before the Assistant Commissioner of Police, Thiruvananthapuram, the 1st respondent herein and thereafter, this writ petition is filed, seeking the following relief:

> "Issue a writ of mandamus or any other appropriate writ or order or direction directing the 1st and 2nd respondents to provide adequate and effective protection to the life of the petitioner and also to give protection to the petitioner to re-thatch her residential building with immediate effect."

2. The 3rd respondent has filed a counter affidavit. According to her, the petitioner and 4 others have got only 17 cents of land in a family partition. They have sold away the entire property and thereafter, the petitioner is claiming that still she is in possession of 3 cents of land. The above claim is absolutely unfounded and made without any basis, it is submitted.

3. The petitioner has filed a reply affidavit, reiterating her contentions in the writ petition and also producing Ext.P5 Patta, she obtained for the aforementioned 3 cents of land in her possession. She has also produced Ext.P6 Commissioner's report filed in the above suit.

4. The learned Government Pleader, upon instructions, submitted that over the same plot of land, the petitioner and the party respondents are claiming rights. Since it is a civil dispute, the police did not interfere.

5. In this jurisdiction, we are judicially reviewing the actions of the police. If the police have failed in their duty, this Court will remedy the same by issuing a writ of mandamus. In this case, there is serious dispute between the parties concerning the right over the property. The police are not empowered to adjudicate on the rights and extend protection to the party, who, according to the police, has right over the property. There is no such duty cast on the police. The civil dispute between the parties has to be settled by the competent civil court. The civil court can also address the police, if found necessary, to enforce its orders. In view of the above position, this Court is not justified in directing the police to assist the petitioner to enforce Ext.P3 ad interim order of the civil court.

In the result, the writ petition fails and it is dismissed without prejudice to the contentions of both sides.

K.BALAKRISHNAN NAIR, JUDGE.

K.P.BALACHANDRAN, JUDGE.

Nm/